



Order 97-10-17
SERVED: October 24, 1997

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 24th day of October, 1997

Application of

FRONTIER AIRLINES, INC.

For an exemption from 14 CFR Part 93,
Subparts K and S, pursuant to 49 U.S.C.
§ 41714 (c)

Docket OST 97-2230

Application of

VALUJET AIRLINES, INC.

For an exemption from 14 CFR Part 93,
Subparts K and S, pursuant to 49 U.S.C.
§ 41714 (c)

Docket OST 97-2442

Application of

AIRTRAN AIRWAYS, INC.

For an exemption from 14 CFR Part 93,
Subparts K and S, pursuant to 49 U.S.C.
§ 41714 (c)

Docket OST 97-2557

**ORDER GRANTING AND DENYING APPLICATIONS FOR SLOT EXEMPTIONS AT
NEW YORK'S LAGUARDIA AIRPORT**

After considering applications for exemptions from 14 CFR Part 93, Subparts K and S, for slots at New York's LaGuardia Airport, the Department has decided to grant six slot exemptions to Frontier Airlines, Inc. ("Frontier"), for service in the Denver, CO-LaGuardia market; eleven slot

exemptions to ValuJet Airlines, Inc. (“ValuJet”), for service in the Atlanta, GA-LaGuardia market; and four slot exemptions to AirTran Airways, Inc. (“AirTran”) for service in the Knoxville, TN-LaGuardia market.¹ We find that granting these exemptions is in the public interest and meets the statutory “exceptional circumstances” test. Grant of the exemptions is conditioned on their being used solely for the markets designated in the carriers’ applications. The Department has also decided to deny the remainder of AirTran’s application for eight slot exemptions for service between LaGuardia and four other points.²

REGULATORY AND LEGISLATIVE BACKGROUND

The High Density Rule, 14 CFR Part 93, Subparts K and S, designates New York’s John F. Kennedy International and LaGuardia Airports, Chicago’s O’Hare International Airport, and Washington’s National Airport as high density traffic airports and prescribes air traffic rules for operating aircraft, other than helicopters, to or from those airports. These regulations limit the hourly number of allocated Instrument Flight Rule (IFR) operations (take-offs and landings) that may be reserved for specified classes of users. The authority to conduct a single operation (either a take-off or landing) at one of these airports is commonly referred to as a “slot”.

On August 23, 1994, Congress enacted the Federal Aviation Administration Authorization Act of 1994 which, among other things, authorized the Department to grant exemptions from the High Density Rule for the provision of basic Essential Air Service (EAS) at eligible communities, for international air service, and for service by new entrant carriers.³ As applied to New York’s LaGuardia Airport and as relevant here, the Act provides for exemption authority as follows:⁴

§ 41714(a) states with regard to basic essential air service that if an eligible community relies on service to a high density airport, the Department must ensure that an air carrier has sufficient operational authority at that airport to provide the required service. It also states that the operational authority shall allow flights at reasonable times taking into account the needs of passengers with connecting flights.

§ 41714(b) authorizes the Department to grant exemptions, based on a public interest finding, to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft. Additional provisions apply regarding slot withdrawals from air carriers for use by foreign air carriers.

§ 41714(c) authorizes the Department to grant exemptions to new entrant air carriers, based on a public interest finding and under circumstances determined by the Secretary to be exceptional.

¹ ValuJet and AirTran have announced a proposed merger of the two airlines’ holding companies. After the consummation of the proposed merger, we understand that the companies will continue to operate as separate entities for at least the near term, and we are treating their slot exemption applications accordingly.

² The Department will rule in later orders on other applications filed more recently for LaGuardia slot exemptions.

³ Codified as 49 U.S.C. § 41714(a), § 41714(b) and § 41714(c), respectively.

⁴ For these purposes, a “new entrant air carrier” may generally be defined as an air carrier or commuter operator that holds or operates (or held or operated, since December 16, 1985) fewer than twelve slots at the airport in question, not including international, EAS, or certain nighttime slots at Washington National or LaGuardia Airports. See 49 U.S.C. §41714(h).

All three applicants listed above -- Frontier, ValuJet, and AirTran -- are seeking authority as new entrant carriers.

FRAMEWORK FOR EVALUATING SLOT EXEMPTION REQUESTS BY NEW ENTRANT AIRLINES

In general, the Act requires that an application be in the public interest and, for a new entrant carrier, that it demonstrate that there are exceptional circumstances. Since the Act was passed, the Department has approved two applications from new entrant airlines, while denying two other applications. For those exemptions that were granted, the Department found that exceptional circumstances existed where the applicant's proposal would address a significant service void. The Department applied that standard narrowly, with the goal of confining our use of the exemption authority to produce the maximum public benefits and to preserve the overall integrity of the High Density Rule.⁵ Thus, the Department denied two new entrant applications based on a determination that the applications did not meet the exceptional circumstances criterion.⁶

Subsequently, a number of airlines filed new slot exemption applications. We have reexamined our decisional standards in the context of those requests and in the light of growing interest expressed by congressional, community, and airline parties, particularly with regard to the need for a competitive spur in certain markets.

In our past approvals and denials of slot exemptions, we have recognized as an exceptional circumstance the existence of markets that were demonstrably large enough to support nonstop service but had no nonstop service. Here, we have determined to define “exceptional circumstances” more broadly by recognizing the need for competitive service in a market, especially low-fare competitive service. Airlines operating as low-fare carriers provide substantial public benefits by making low fares available to many more travelers and thereby greatly increasing the size of the market.⁷ In expanding the range of exceptional circumstances, we are concurring with the concerns that have been raised by members of Congress, numerous community groups, new entrant airlines, the General Accounting Office, and within the Department about the state of competition in the airline industry. As an example, in an October 1996 study entitled Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets (“GAO Report”), the General Accounting Office found that “control of slots by a few airlines greatly deters entry at key airports in Chicago, New York, and Washington.”⁸ The report further pointed out that such barriers to entry result in higher fares, citing the fact that average fares at New York's LaGuardia Airport were 35 percent higher than the average for 33 other large airports during 1995.⁹

We find that substantial benefits can be achieved through increasing competition at slot-controlled airports in situations where consumers would be able to obtain significantly lower fares in

⁵ Order 94-9-30 and Order 96-5-33.

⁶ Order 95-4-33 and Order 95-8-38.

⁷ See the Department's study entitled The Low Cost Airline Service Revolution, April 1996.

⁸ Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets, October 1996, at 4.

⁹ Id., at 21.

noncompetitive or underserved markets. Therefore, we find that applications proposing to introduce such service can meet the exceptional circumstances criterion of the legislation.

Consistent with our continuing goal of achieving maximum public benefits through the grant of slot exemptions, we will also clarify other aspects of our decisional guidelines for determining public interest and exceptional circumstances. First, we would favor proposals that are based on jet aircraft that meet Stage 3 noise requirements;¹⁰ second, there should be a reasonable expectation that the proposed service would be operationally and financially viable; third, we will place a premium upon the introduction of (a) new nonstop services where none exist and (b) new competitive services, especially by applicants that have the demonstrated potential to offer low-fare competition, where there is single carrier service and the market could support entry, or where existing services do not produce meaningful price competition. Even though we are expanding the use of our exemption authority, it is clear that we cannot grant all of the applications that might be made under this statute. We emphasize, therefore, that the number of available slot exemptions is very limited, and we may have to apply our guidelines on an increasingly more restrictive basis or even deny applications that otherwise meet the standards set forth in this order.

In generally requiring the use of jet aircraft for all slot exemption operations (except essential air service), the Department is recognizing the public benefit of deploying scarce resources in a manner that makes them available to the highest number of users. Favoring the use of Stage 3 aircraft is consistent with language in those sections of the Act pertaining to essential air service, international air service, and the special rules that are applicable to Washington National Airport, although the requirement was omitted from the provision applicable to new entrant carriers. Thus, our decision that the public interest requires these aircraft for all slot-exemption approvals is based on the overall emphasis on Stage 3 equipment in most of the provisions of the Act and in similar provisions of the Airport Noise and Capacity Act of 1990, which called for the elimination of Stage 2 aircraft by December 31, 1999.

In adopting this framework, the Department is expressing its agreement with many of the concerns raised by a number of congressional, civic, and airline parties, as highlighted by the GAO Report noted above.¹¹ The Department had made clear its support for increased competition and its willingness to invoke available tools to promote new competition, when it stated in its January 6, 1997, response to the GAO Report that "...the Department intends to be more receptive to considering competition as a factor in granting slot exemptions to new entrants under the 'exceptional circumstances' criterion."¹²

APPLICATION OF FRONTIER

¹⁰ 14 CFR Part 36, Subpart C and Appendix C.

¹¹ We are concurrently issuing an order on applications for slot exemptions at Chicago's O'Hare Airport, which includes an identical explanation of this decisional framework.

¹² Based on the view that slots are barriers to entry, the GAO Report also recommended that the Department create a pool of available slots by periodically withdrawing some slots that had been grandfathered to the major airline incumbents, taking into account the investments made by those airlines at each of the slot-controlled airports, and hold a lottery to distribute them in a way that increases competition. The Department is assessing this course, as well as other slot-related options, as a means of stimulating new price competition.

On March 17, 1997, Frontier Airlines filed an exemption application to enable it, as a new entrant, to operate three round trips per day between Denver International Airport and New York's LaGuardia. The Air Carrier Association of America (ACAA) filed a motion to answer in support of Frontier's application on July 9. On April 1, TWA filed an answer to Frontier's application, to which Frontier filed a reply on April 8. United also filed a motion to answer April 18, to which Frontier replied on April 30, and United filed a surreply with motion to file on May 8. On September 4 ACAAA filed a motion to reply to the various replies of United, USAirways, Delta, and TWA concerning Frontier's and other carriers' applications.¹³ We will grant all of these motions.

Frontier asserts that its application meets the Department's exceptional circumstances criteria and that its proposed service is in the public interest. In support of that position Frontier states that Denver-LaGuardia is a United monopoly market, that United's one-way business fares to and from Denver, as well as its full coach fares, are the highest in the nation, and that Frontier will offer substantially lower fares to Denver-LaGuardia passengers than are now available.

Frontier also notes that its proposed service will benefit passengers between LaGuardia and behind-Denver cities on Frontier's system in the form of one-stop service and significantly lower fares.

Finally, Frontier states that it has examined the possibility of purchasing slots, but concluded that such transactions are cost-prohibitive for a carrier of Frontier's size. In addition, Frontier argues that they would result in transferring wealth from a weaker to a stronger carrier and that the cost of slots would have to be passed on to consumers.¹⁴

TWA argues that Frontier's application relies wholly on public interest arguments and disregards the exceptional circumstances requirement. TWA asserts that United's position as the only Denver-LaGuardia nonstop carrier is a natural reflection of the domestic hub-and-spoke system and does not constitute an exceptional circumstance. In that regard, TWA analogizes Denver-LaGuardia to ten other major LaGuardia markets that are served nonstop by only the hub carrier at the other point. It also contends that Frontier's alternative, purchasing or leasing slots at LaGuardia, is a normal cost of doing business.

Frontier's reply reiterates that the existence of monopoly nonstop service for a major market like Denver-LaGuardia constitutes an exceptional circumstance.

United says that it takes no position on Frontier's application, but argues that Frontier has made false and misleading charges about United's competitive activities at Denver and urges the Department to take appropriate steps to enforce Rule 4(b) of its Rules of Practice.

¹³ ACAAA submitted its comments on behalf of ACAAA members, ValuJet, Reno Air, AirTran, Frontier and Spirit, the Business Travel Contractors Corporation, Newport News-Williamsburg International Airport, Toledo Express Airport, Metropolitan Knoxville Airport Authority, Quad City Airport and Central Illinois Regional Airport.

¹⁴ Frontier and ValuJet have each asserted in their pleadings that United and Delta, respectively, have engaged in predatory practices and other unfair competitive practices. United and Delta deny the allegations. We do not find it appropriate or necessary to resolve those assertions in this order. Rather, we are in the process of informally considering them outside of this proceeding and will take action on them through a separate proceeding, if appropriate.

APPLICATION OF VALUJET

On May 2, 1997, ValuJet Airlines filed an application for a total of eleven slot exemptions to enable it to operate six round trips per day between Atlanta and New York's LaGuardia for an average six days per week. A proposed twelfth operation would be scheduled outside the slot-controlled hours.

Answers in opposition were filed by Delta and the Office of the Queens Borough President (Queens), the latter accompanied by a motion to late file. ValuJet subsequently filed a motion to reply to Delta, to which Delta filed a motion to surreply and ValuJet then filed a motion to file a rejoinder. We will grant all these motions.

ACAA supported ValuJet's request, as well as those of other applicants, in its pleadings of July 9 and September 4.

ValuJet argues that its proposed service is in the public interest and meets the statutory exceptional circumstances criterion for slot exemptions. ValuJet cites as exceptional circumstances the facts surrounding the Atlanta-LaGuardia market. It notes that Atlanta-LaGuardia is both the largest Atlanta market and the largest LaGuardia market without nonstop competition. In 1995, 500,000 Atlanta-LaGuardia passengers paid an average one-way fare of \$233.70 for Delta's monopoly services. ValuJet entered the market in May 1996, offering one-way fares from \$89 to \$149, which Delta matched. Following ValuJet's temporary suspension of service in June 1996, Delta's one-way walk-up fare increased, reaching \$523 in May of 1997.

ValuJet also argues that Atlanta-LaGuardia is a distinct and separate market from Newark and JFK. It notes that competition from Kiwi and Continental in the Atlanta-Newark market and from TWA in the Atlanta-JFK market has kept the average fares in those markets approximately 35 percent below Delta's Atlanta-LaGuardia fares. Thus, it is evident that neither Newark nor JFK service can adequately discipline prices in the Atlanta-LaGuardia market.

ValuJet also provided a history of its extensive attempts to obtain slots at LaGuardia, concluding that no airline is now willing to offer it any useable slots for any price or term.

Delta argues that the appropriate vehicle for ValuJet to obtain its slots is through the free trading permitted under the buy-sell rule. Delta contends that the buy-sell rule has worked efficiently over time to allocate slot resources and that ValuJet has not shown that slots are unavailable at LaGuardia.

Second, Delta argues that there is ample competition in the New York-Atlanta market, and that ValuJet's application does not qualify as an exceptional circumstance. It asserts that there is precedent on that point in Order 95-8-38 where the Department found that there was competitive service in the overall Detroit-New York market, and on that basis found that Spirit Airlines' slot request for proposed Detroit-LaGuardia service did not meet the exceptional circumstances criterion.

Delta also suggests that ValuJet may not be a new entrant as contemplated by the statute, because it previously held LaGuardia slots through a lease with Continental, but subsequently canceled the lease following its temporary suspension of service in June 1996. The statute requires that a carrier must not have sold or given up a slot at the relevant airport to qualify as a new entrant.

Queens echoes many of the comments Delta had presented and argues that the ValuJet application should be denied because (1) ValuJet is not a new entrant carrier as defined by the appropriate statute, (2) ValuJet has failed to show that grant of its application is in the public interest, and (3) ValuJet has not demonstrated that there are exceptional circumstances warranting grant of its application.

Queens also argues that ValuJet's request fails the statutory public interest test in that it failed to address the safety ramifications of its application as well as the adverse noise and congestion impact that Queens asserts will befall the residents of the Borough of Queens. Queens claims that there has been an increased number of "close-call" incidents brought on by the heavy volume of traffic at the New York City airports and a chronic shortage of air traffic controllers.

Queens also argues that granting ValuJet's application will result in substantially greater delays for LaGuardia passengers and in significantly more noise for Queens residents, who assertedly suffer from the heaviest concentration of aircraft noise in residential areas in the country.

ValuJet expanded on its assertions about the monopoly service and fare premium in the Atlanta-LaGuardia market. It added, in response to Delta's contention that ValuJet does not qualify as a new entrant carrier as defined by the statute, that it has never held LaGuardia slots but rather leased them from Continental. Moreover, it asserts that it qualifies as a new entrant by meeting the definition of a limited incumbent under the statute, *i.e.*, a carrier that has held or operated fewer than 12 slots at the relevant airport.

APPLICATION OF AIRTRAN

On May 27, 1997, AirTran, a new entrant based in Orlando, filed an exemption application to enable it to operate six round trips (12 slots) per day with B-737 aircraft between LaGuardia and five cities over three separate routings:

- (1) Bloomington/Normal and Moline/Quad Cities, Illinois in a round-robin service pattern with each city receiving one nonstop and one one-stop flight per day;
- (2) Toledo and Akron, Ohio, in a linear routing with Akron receiving two nonstop flights per day and Toledo receiving two one-stop flights per day; and
- (3) Knoxville, Tennessee, receiving two nonstop flights per day.

Answers in support of AirTran's application were filed by the Metropolitan Airport Authority of Rock Island County, Illinois (Moline/Quad Cities), by the Central Illinois Regional Airport at Bloomington/Normal, and by Aviation Systems Research Corporation (ASRC). These parties discussed the diverse industrial bases and broad geographic area and populations served by the proposed cities. ASRC added that AirTran's low fares would provide some competitive

discipline for New York service now offered by the hubbing carriers, Northwest at Detroit and Continental at Cleveland. ACAA also supported AirTran's request in its pleadings of July 9 and September 4.

Answers in opposition to AirTran's application were filed by Delta, TWA, and Queens.

In support of its request, AirTran states that none of these cities currently has direct roundtrip service to any New York airport¹⁵ and that New York is among the top five origin and destination points for each of them. It represents that the cost of purchasing or leasing slots at LaGuardia is prohibitively high.

Delta repeats the concerns it raised in the ValuJet application, as discussed *supra*. In sum, it argues that granting the AirTran application would open a floodgate of similar applications, that no "exceptional circumstances" have been demonstrated, and that AirTran has offered no evidence of having attempted to obtain LaGuardia slots through the marketplace.

As it asserted in response to ValuJet's application, Queens argues that the AirTran application does not consider the safety implications of its proposed service; that added service would increase noise, congestion and pollution at LaGuardia to unacceptable levels; that grant of the application would generate a plethora of similar applications requiring similar treatment; and that AirTran has failed to demonstrate exceptional circumstances.

TWA adds that the three pending LaGuardia slot exemption requests total 30 slots, and would cause delays that would far outweigh any public benefits. TWA says that the only public interest discussion in AirTran's application is limited to the size of the populations of the benefiting cities. It notes also that, in fact, traffic in AirTran's proposed markets is limited and that there is no public interest support for the proposal.

DECISION

APPROVAL OF THE APPLICATIONS OF FRONTIER AND VALUJET

We have decided to grant Frontier's application for six slot exemptions at LaGuardia for Denver-LaGuardia service, and ValuJet's application for eleven slot exemptions at LaGuardia for Atlanta-LaGuardia service. We find that both applications are in the public interest and meet our guidelines for the exceptional circumstances criterion as we have outlined in this order.

Frontier's proposal comports with our guidelines in all respects. It will use Stage 3 jets to introduce competition in a market of substantial size where direct service is currently offered by only one carrier; it has a demonstrated history of offering low fares; United's existing fares in the proposed market, Denver-LaGuardia, are quite high; and the prospective financial viability of the proposal is reasonable.

For the year ended December 31, 1996, there were 274,040 Origin and Destination passengers, or about 750 passengers per day, between Denver and LaGuardia, clearly a sufficient traffic base to

¹⁵ On June 15 US Airways began six-days-a-week one-stop service in one direction only from LaGuardia to Toledo via Pittsburgh.

support competitive nonstop service. As recently as 1994, Denver-LaGuardia had the benefit of nonstop service from a second airline, Continental. Today, only United offers nonstop service, with a total of six roundtrips a day with B-737 aircraft (*Official Airline Guide*, October 1997). Frontier expects to stimulate substantial new traffic through the introduction of low fares, noting that its entry into other United markets has caused fares to decline by about 30 percent from the previous fare levels.

Frontier's expectations in this case reflect the premise, previously noted by the Department, that airport-specific routes can and do constitute separate markets if airlines serving such routes have some ability to disregard the fares and services offered at other airports. (Order 87-10-58 at 22-23) That premise appears to be applicable to the Denver-LaGuardia market.

First, Frontier alleges that LaGuardia is a more convenient airport than Newark for the residents of most of New York City, including Manhattan. Travellers visiting Manhattan and most of the rest of the city are similarly likely to find LaGuardia preferable to Newark. The greater convenience of using LaGuardia will insulate airline services at LaGuardia from the competitive effects of service at Newark to a significant extent. That Newark fares do not completely discipline fares at LaGuardia is demonstrated by Frontier's comparison of Denver-LaGuardia and Denver-Newark fares.

Frontier notes that Denver-LaGuardia average fares are 29 percent higher than Denver-Newark fares. Stated another way, United, the sole nonstop carrier between Denver and LaGuardia, appears to be able to disregard fares offered on the Denver-Newark route, since its fares to LaGuardia are substantially higher than those available via Newark. These figures indicate that Denver-LaGuardia is a separate market from Denver-Newark, and that Denver-LaGuardia fares are not disciplined by alternative services between Denver and other New York airports.

Our own review of recent average fares in the Denver-LaGuardia market confirms that they are consistently higher than those between either Denver-Newark or Denver-JFK. The Department's most recent *Domestic Airline Fares Consumer Report* (September 1997, based on data for the first quarter 1997) shows that among the largest domestic city-pair markets in the 1601- to 1700-mile stage length bracket, Denver-New York has the fifth highest average one-way fare; and the average one-way fare for the largest carrier in the overall Denver-New York market, United, was the third highest of all markets in that group, \$325.¹⁶ To place these statistics in context, the average one-way fare for the lowest-fare Denver-New York carrier, Continental, was \$190, and that statistic primarily reflected Continental's traffic and service between Denver and Newark, where Continental offers three nonstop roundtrips a day.

We find, moreover, that the slot restrictions themselves do not cause these wide differences in fares between the airports. As shown by ValuJet's entry last year into the Atlanta-LaGuardia market, service by a low-fare airline will lead to dramatic fare reductions in a LaGuardia market.

TWA argues, in opposition to Frontier's application, that there is ample nonstop service in virtually all LaGuardia markets involving the hub of any airline, including LaGuardia-Denver. In

¹⁶ Fare data in the report include fares for nonstop service, other single-plane service, and connecting service.

support of that view, TWA cited ten other LaGuardia markets that have only one nonstop airline, *i.e.*, the airline that has a hub at the other point, and stated that the nature of the hub-and-spoke system makes it unlikely that any other airline would offer competitive nonstop service in such markets.

This argument addresses only service and does not recognize the more critical issue of price competition. Our own assessment of the service and fare levels in these markets reinforces rather than rebuts the validity of Frontier's position. Again referring to the Department's *Domestic Airline Fares Consumer Report* for the first quarter of 1997, we note that with only one exception (LaGuardia-Detroit) the markets TWA cited are among the least price-competitive in the nation, ranging from the very highest to the ninth highest average-fare city-pairs in their respective mileage groupings. This is precisely the factual situation that led the General Accounting Office to find that "control of slots by a few airlines greatly deters entry at key airports in Chicago, New York and Washington," and that such barriers to entry result in higher fares. While United's status as the only nonstop operator from its Denver hub to LaGuardia may be duplicated in other LaGuardia markets, the virtual absence of meaningful price competition in the Denver-LaGuardia market, a large market, and the barriers to entry constitute exceptional circumstances justifying the grant of Frontier's application.

Both TWA and Delta argue that the appropriate vehicle through which Frontier, ValuJet, and others should seek slots at constrained airports is through the buy-sell marketplace, which they contend has allocated slots more efficiently than can an exemption process. We accept the statements of Frontier and ValuJet that they did attempt to obtain slots through that mechanism but were unsuccessful. In addition, the objectors' contention is flawed in several respects. First, it does not recognize that in specifically authorizing the Department to grant slot exemptions to new entrant airlines Congress determined that the buy-sell rule should not be the exclusive means for such airlines to obtain slots. Second, the major slot holders at the HDR airports received the overwhelming majority of their slots without cost under the grandfather provisions of the buy-sell rule. That privilege conveys a cost advantage for such carriers over potential competitors, whose access to such airports is solely through leasing or purchasing slots. In the same connection, Frontier and ValuJet observed in their pleadings that the purchase price for slots is very high, typically between \$500,000 and \$1 million, if slots are made available for sale at all; and that leasing arrangements may be subject to conditions, such as thirty-day termination clauses, that make leases an unattractive way to begin viable service and develop traffic at a slot-controlled airport.

ValuJet's proposal also fully meets the guidelines we have established for granting slot exemptions to new entrant airlines: it contemplates introducing low-fare competition, using Stage 3 jets, in a large market that currently is served nonstop by only one airline that charges very high fares.

Atlanta-LaGuardia is both Atlanta's and LaGuardia's largest market with only a single nonstop air carrier. It generated 613,380 origin-and-destination passengers in calendar year 1996, approximately 1,680 a day.

The average fares in the overall Atlanta-New York market are among the highest in the nation for markets of comparable length. It has the fifth highest average fare among all domestic city-pair

markets with 751-to-800-mile stage lengths (*Domestic Airline Fares Consumer Report, supra*). Moreover, the history of air fares in the Atlanta-LaGuardia market demonstrates the public benefits provided when a low-fare airline enters a market. Upon entering the Atlanta-New York market in May 1996, ValuJet offered one-way fares of \$89 to \$149. ValuJet notes in its application that during calendar year 1995, prior to ValuJet's entry, the average Atlanta-LaGuardia one-way fare was \$233.70. After ValuJet had been forced to exit the market following its temporary cessation of service systemwide in June 1996, Delta's fares reverted to much higher levels, as illustrated by a comparison of the available one-way walk-up fares in the respective periods: ValuJet's one-way walk-up fare was \$149, and Delta's, following ValuJet's suspension, was \$523, an increase of 251 percent.

Furthermore, there is evidence that Atlanta-LaGuardia is a distinct market from Atlanta-Newark and Atlanta-JFK. ValuJet alleges that many New York City residents prefer to use LaGuardia rather than Newark or JFK, since it is more convenient. ValuJet states that among the three primary New York City airports, average one-way fares out of LaGuardia between the first quarter 1992 and the third quarter 1996 were 57 percent higher than those out of Newark and 53 percent higher than those out of JFK. (Application at 5)

Delta and Queens wrongly argue that in denying the slot exemption application of Spirit Airlines in Docket OST-95-265 the Department had found that the Detroit City-LaGuardia route does not constitute a separate market. We do not find that case and those addressed in this order analogous. In the latter case, the Department concluded only that Spirit had not demonstrated that there was a separate Detroit-LaGuardia market. As explained above, we find that the Denver-LaGuardia and Atlanta-LaGuardia markets are separate markets for a substantial number of travelers.

Delta argues that any airline with LaGuardia slots and flights to Atlanta can offer competitive Atlanta-LaGuardia service. There is neither logic nor evidence to support that position. First, another networking carrier would face a severe disadvantage in attempting to compete with Delta on any Atlanta route except one between Atlanta and its own hub. Delta's hubbing operation at Atlanta gives it competitive advantages that no non-hubbing carrier can match, unless the latter offers low-fare service. No network airline now serves Atlanta nonstop except from its own hub. ValuJet, in contrast, should be able to operate successfully on the Atlanta-LaGuardia route -- ValuJet has a hub at Atlanta, and it can offer consistently low fares because its costs are relatively low.

Notwithstanding the assertions by Delta and Queens, we find that ValuJet is a "new entrant" within the meaning of 49 U.S.C. section 41714(h). The total number of slots that ValuJet leased at LaGuardia, ten, falls within the statutory threshold of twelve for a limited incumbent, which under section 41714(h) permits ValuJet to qualify as a new entrant.

Delta and Queens argue that the Department's denial in 1995 of a Spirit Airlines application for LaGuardia slots in Docket OST-95-265 compels denial of ValuJet for the same reasons. We disagree. The Department found in *Spirit* that the benefits of that proposal, which contemplated service between LaGuardia and Detroit City Airport, were too speculative and that it was impossible to quantify and evaluate the potential benefits of the service on the basis of Spirit's

pleadings. We noted that Southwest Airlines had previously initiated and subsequently discontinued operations at Detroit City Airport, and that Spirit itself "appear(ed) to doubt its own potential for early success" in stating that it did not expect high load factors. In that respect, the Department's rationale for deciding *Spirit* is fully reflected in the guidelines specified in this order for demonstrating exceptional circumstances, *i.e.*, that there should be a reasonable expectation that the proposed service would be operationally and financially viable.

Delta and Queens are correct in noting that in *Spirit* we expressed concern about potential increases in flight delays and congestion. That concern was not the primary basis for our denial of Spirit's application. Rather, the threshold issue was the adequacy of the service proposal in the context of our responsibility to balance the benefits of an exemption for "the scarce and valuable resources of slots at New York's LaGuardia Airport with the desire of other parties to use those slots." (Order 95-8-38 at 5) We did find, in addition, that there was a potential for increased airport delay and congestion, based on the position of the Federal Aviation Administration's Office of Air Traffic System Management at that time. In deliberating on the applications at issue in this order we make two critical distinctions from *Spirit*.

First, in expanding the guidelines for meeting the exceptional circumstances test, we have established in this order that we are placing a premium on new competitive services, especially by applicants that have the demonstrated potential to offer low-fare competition. Thus, in reaching our public interest findings, we are guided by the critical and growing need to seek and implement ways to improve the status of airline competition, and we find it appropriate and necessary to balance that mandate against any potential offsetting considerations, including the extent to which expanded operations may cause flight delays and/or congestion.

Second, we have further consulted with senior officials of the Federal Aviation Administration, especially in view of the argument voiced by Queens that granting the ValuJet application may compromise safety at LaGuardia, and would increase noise and flight delays. With regard to safety, the sophisticated traffic management system that is in place today limits demand to operationally safe levels through a variety of air traffic control programs and procedures that are implemented independently of the limits imposed by the High Density Rule. FAA's Air Traffic Control will continue to apply these programs and procedures for ensuring safety regardless of any changes to the HDR or any slot exemptions that the Department may grant. While Queens has alleged that there has been an increase in the number of "close-call" incidents at New York City airports and a shortage of air traffic controllers, the FAA assures us that safety will not be compromised by the increase in operations at those airports contemplated by this order.

With regard to congestion, delays and noise, the number of new operations we are willing to consider through exemption relief is very small. The action we are adopting in this order will authorize an increment of only 21 operations, an increase over current operations of less than three percent, which the FAA does not anticipate will cause significant delay problems. Moreover, the Department has performed an Environmental Impact Assessment, and we found that an increase in operations slightly greater than the number we are authorizing here would not have a significant noise impact. Similarly, we do not anticipate a noticeable impact on flight delays, based on the analysis contained in the Department's *Study of the High Density Rule*, May

1995.¹⁷ We note in that regard that the specific times to be implemented under the exemptions granted in this order are subject to final agreement between the applicants and the FAA, and we would expect the parties to strike a reasonable balance between peak and off-peak hours, thus further easing the potential for creating flight delays.

With regard to Delta's comment that the grant of exemptions here will prompt numerous similar applications, we recognize and have stated in our guidelines, *supra*, that we will be able to grant only a limited number of such exemptions, and that we will deny requests that would exceed that number.

PARTIAL APPROVAL OF AIRTRAN'S APPLICATION

We find that AirTran's proposal for service to Knoxville is in the public interest and meets the exceptional circumstances guidelines discussed previously. However, consistent with our policy goal of maximizing public benefit in our administration of slot exemptions, we do not find that the balance of AirTran's proposal warrants the special slot relief it seeks. Accordingly, we will grant AirTran an exemption to enable a total of four operations in the Knoxville-LaGuardia market, and we will deny the remainder of its request.

AirTran is a new entrant within the meaning of the statute. It will offer Knoxville-LaGuardia travelers jet service with B-737 aircraft that are Stage 3-compliant, and charge fares as much as 50 percent below those currently available. In calendar year 1996, Knoxville-LaGuardia generated 34,354 origin-and-destination passengers, or 94 per day, without single-plane service. In fact, Knoxville does not enjoy single-plane roundtrip access to any New York City airport, even though in 1996 Knoxville-New York traffic overall totaled 60,250 passengers, an average of 165 per day. AirTran notes that it succeeded in generating traffic increases of over 300 percent in other markets that it entered during the past year, *i.e.*, between points in Illinois and Orlando. It attributes that success to its low-fare program, and it projects that it will have an equally positive response in the markets it is proposing to enter here.

We accept AirTran's figures and expectations as reasonable evidence of the viability of its Knoxville proposal, and we find that the proposed service will benefit a substantial number of consumers and will be an efficient use of the slot exemptions needed for its implementation.

The demonstrated traffic base for the remainder of AirTran's proposed markets is not large. Origin-destination data for 1996 show the following traffic:

¹⁷ On the basis of further review of that analysis, we now find that we were incorrect in finding in the *Spirit* case that the increased operations proposed there would significantly affect flight delays and congestion. We reiterate that the primary basis for the Department's decision in that case was the failure of the applicant to demonstrate exceptional circumstances. As stated above, the analysis contained in the May 1995 *Study of the High Density Rule* shows that flight delays resulting from the Spirit proposal, as well as from those addressed in this order, would not be significant.

	<u>O&D Passengers</u>	<u>Passengers Per Day</u>	
<u>Bloomington/Normal</u>			
BMI-LGA	3,269	9	
BMI-EWR	2,345	7	
BMI-JFK	<u>106</u>	<u>-</u>	
Total NYC	5,720	16	
 <u>Moline/Quad Cities</u>			
MLI-LGA	5,953	16	
MLI-EWR	8,594	24	
MLI-JFK	<u>683</u>	<u>2</u>	
Total NYC	15,230	40	
 <u>Akron/Canton</u>			
CAK-LGA	7,274	20	
CAK-EWR	7,685	21	
CAK-JFK	<u>551</u>	<u>1</u>	
Total NYC	15,510	42	
 <u>Toledo</u>			
TOL-LGA	10,584	29	
TOL-EWR	11,055	30	
TOL-JFK	<u>581</u>	<u>2</u>	
Total NYC	22,220	61	

We acknowledge that these markets currently have no direct access to any of the New York City airports, and that the introduction of such service would be beneficial. However, as we noted above, traffic in the subject markets is relatively small, and we do not find that the service benefits therein would constitute an efficient use of slot exemptions to the extent necessary to warrant our approval.

As we stated in discussing our decision on Frontier's and ValuJet's applications, we are keenly mindful of the concerns raised by Queens, as well as by other carriers, with regard to safety, noise, delays, and the likelihood that the grant of exemptions here will prompt many similar filings in the future. We intend to monitor the effect of the expanded services we are authorizing in this order. However, for the reasons we explained in the earlier section, safety will not be compromised. We reiterate that we do not anticipate any significant adverse impact from increased noise or delays.

FUTURE CHANGES

As the FAA slot regulation makes clear “[s]lots do not represent a property right but represent an operating privilege subject to absolute FAA control [and] slots may be withdrawn at any time to fulfill the Department’s operating needs...”

14 CFR section 93.223(a). This order should not be construed as conferring on these carriers any ability to sell, trade, transfer, or convey the operating authorities granted by the subject exemptions.

The Department is granting slot exemptions by this order on the ground that the services proposed by the applicants meet the statutory public interest and exceptional circumstances criteria. The Department reserves the right to modify or terminate such exemption authority if the Department determines that, due to changed circumstances, these criteria are no longer satisfied by an applicant's use of the authority.

This order is issued under authority delegated in 49 CFR 1.56(l).

ACCORDINGLY,

1. The Department grants an exemption from 14 CFR Part 93, Subparts K and S, to Frontier Airlines, Inc., to enable Frontier to operate three arriving flights and three departing flights at New York's LaGuardia Airport during the slot-controlled period 6:00 a.m. to 12:00 midnight at times to be determined in consultation between Frontier and the Federal Aviation Administration. This authority may be used only to provide nonstop service between Denver, CO, and LaGuardia Airport;
2. The Department grants an exemption from 14 CFR Part 93, Subparts K and S, to ValuJet Airlines, Inc., to enable ValuJet to operate five arriving flights and six departing flights at New York's LaGuardia Airport during the slot-controlled period 6:00 a.m. to 12:00 midnight at times to be determined in consultation between ValuJet and the Federal Aviation Administration. This authority may be used only to provide nonstop service between Atlanta, GA, and LaGuardia Airport;
3. The Department grants an exemption from 14 CFR Part 93, Subparts K and S, to AirTran Airlines, Inc., to enable AirTran to operate two arriving flights and two departing flights at New York's LaGuardia Airport during the slot-controlled period 6:00 a.m. to 12:00 midnight at times to be determined in consultation between AirTran and the Federal Aviation Administration. This authority may be used only to provide nonstop service between Knoxville, TN, and LaGuardia Airport;
4. Except to the extent granted above, the Department denies the request of AirTran for an exemption in Docket OST 97-2557;
5. The Department directs Frontier, ValuJet and AirTran to contact the Airspace and Air Traffic Law Branch of the Office of the Chief Counsel in the Federal Aviation Administration, as soon as possible following the issuance of this order to determine the actual times for arriving and departing flights as authorized by this order and to establish the starting date for implementing the schedules;

6. The authority granted under these exemptions is subject to all of the other requirements delineated in 14 CFR Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use or lose requirements; and

7. We will serve all parties in Dockets OST-97-2230, 2442, and 2557.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at:
<http://dms.dot.gov/dotinfo/general/orders/aviation.html>.*